



COURT MARTIAL

Citation: *R. v. Koutsogiannis*, 2020 CM 2010

Date: 20200713

Docket: 202029

Standing Court Martial

Asticou Centre
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Private P. Koutsogiannis, Offender

Before: Commander S.M. Sukstorf, M.J.

Restriction on Publication: Pursuant to section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, the Court directs that any information that could identify anyone described in these proceedings as the complainant or victim of the offences shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Private Koutsogiannis pleaded guilty to one charge contrary to section 129 of the *National Defence Act (NDA)*. Having accepted and recorded his plea of guilty with respect to the charge, the Court must now determine and pass sentence on the charge which reads as follows:

“FIRST CHARGE

CONDUCT TO THE PREJUDICE OF

Section 129 of the
National Defence Act

GOOD ORDER AND DISCIPLINE

Particulars: In that he, between 14 October 2017 and 17 January 2018, at the Canadian Forces Leadership and Recruit School, Saint-Jean-sur-Richelieu, Quebec, did touch the genitals, inner thighs and buttock of other Canadian Armed Forces members without their consent.”

[2] The Statement of Circumstances filed in court reads as follows:

“STATEMENT OF CIRCUMSTANCES

A. Pte C.:

1. Around week 5 of his BMQ, while sitting in the classroom during a break, Pte Koutsogiannis, who was sitting on his right, grabbed Pte C’s genitals with his hand, as if to annoy or disturb him. Pte Koutsogiannis seemed to find it very funny. Pte C. told him not to do it again.

2. In week 8 of his QMB, in the "blue break room", Pte Koutsogiannis was seated next to Pte C. and grabbed his genitals again. Afterwards, he was sitting in class and Pte Koutsogiannis was next to him, put his hand on his thigh, rubbed lightly, went up to the groin and was laughing as he was doing so. When Pte C. told him to stop, Pte Koutsogiannis seemed to find it even funnier.

B. Pte B.:

3. Around week 4 or 5 of his BMQ course at CFLRS, when Pte B. was getting out of his "pod", Pte Koutsogiannis walked in his direction and grabbed him directly on his genitals with his hand. He said to him: "*What are you doing? Never do that again!*"

4. On January 17, 2018, when he was coming out of the kitchen in Farnham and going to get his coat in the locker room, Pte Koutsogiannis shouted: "*Penis!*" and tried to grab him on the genitals, but he blocked it with his hand and told him not to touch him.

C. Pte W.:

5. In about week 3 or 4, while Pte W. was waiting in line, Pte Koutsogiannis was passing by and grabbed his genitals as he passed.

6. Approximately in week 6, Pte Koutsogiannis slapped Pte W's buttocks in the locker room while he was changing and wearing his underwear only.

7. In week 9, while the platoon was following a training in the classroom, Pte W. was seated next to Pte Koutsogiannis. At one point, Pte Koutsogiannis began to rub his leg on the thigh. He told him to stop.

D. Pte BB.:

8. A few days before the New Year break, in the locker room, while Pte BB. was changing and was naked, Pte Koutsogiannis put his finger in his buttock crack as if to joke around. Pte Koutsogiannis was laughing.

9. During the same period of time, Pte Koutsogiannis grabbed his genitals with his hand as he was passing by him. He told him never to do it again.

E. Pte M.:

10. Between week 3 and week 9 of the BMQ, there were more than one incident where Pte Koutsogiannis grabbed Pte M's genitals. For example, once sitting in the classroom, Pte Koutsogiannis turned around, grabbed his genitals with his hand and laughed at the same time.”

The joint submission

[3] In a joint submission, the prosecution and defence counsel recommend that the Court impose a sentence of a severe reprimand and a fine in the amount of \$4,000. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada clarified that a trial judge must impose the sentence proposed in a joint submission, “unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest”. By entering into a joint submission, the constitutional right to be presumed innocent is given up and this should never be done lightly. In fact, by virtue of the oath taken by all service members, this right is one we all stand to protect.

[4] Thus, in exchange for making a plea, the accused must be assured of a high level of certainty that the Court will accept the joint submission. The prosecution, who jointly proposed the sentence, will have been in contact with the chain of command as well as the victims, and is aware of the needs of the military and the surrounding community and is responsible for representing those interests. The defence counsel acts exclusively in the accused’s best interests, including ensuring that the accused’s plea is a voluntary and informed choice, and unequivocally acknowledges the accused’s guilt. As members of the legal profession and accountable to their respective law societies, the Court relies heavily on their professionalism, honesty, judgement, as well as their duty to the Court.

The evidence

[5] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under the *Queen's Regulations and Orders for the Canadian Forces*. The Statement of Circumstances was introduced on consent to inform the Court of the context of the incident that led to the charge before the Court. The Court was also provided with an Agreed Statement of Facts (ASOF) that provided those facts relevant to Private Koutsogiannis and his personal circumstances. Further, the Court benefitted from counsel's submissions to support their joint submission on sentence, where they highlighted additional relevant facts and considerations. The prosecution and defence counsel also provided the Court with judicial precedents for comparison.

The offender

[6] Private Koutsogiannis is twenty-nine years old. He was born and raised in Swift Current, Saskatchewan. He worked in the oil industry for four years, as well as in his parents' restaurant/bar for three years, prior to enrolling in the Canadian Armed Forces (CAF) on 4 October 2017. He has thus far served for almost three years. He is currently serving as a member of the regular force, a member of 3rd Battalion, Princess Patricia's Canadian Light Infantry (3 PPCLI) stationed in Edmonton, Alberta. Both prosecution and defence suggest that the conduct which is before the Court was part of a larger scheme of similar conduct occurring within the offender's platoon during his recruit training. Since the start of the investigation into the incidents before the court, Private Koutsogiannis's career as an infantryman has been put on hold and he has not progressed within his military occupation. Therefore, for the last three years, he has been subjected to administrative duties.

[7] When the offender was given an opportunity to speak, he accepted full responsibility for his conduct. In the ASOF, the offender admits that he was intimidated and overwhelmed by the military discipline he was introduced to for the first time during recruit training and he tried to show off. He acknowledged that he engaged in the charged behaviour in an effort to be funny. When he spoke to the Court, he explained that he acted this way to try to fit in and although he admitted that not all his course mates were horsing around in the same manner, that similar misconduct occurred routinely between him and his friends. He confessed that without that context, his conduct would be considered even more unacceptable. He fully admitted what he did was wrong and is willing to do whatever he can to demonstrate that he understands this, including taking counselling if required. He is in full agreement that this type of conduct must be deterred.

[8] Aside from the incident before the Court, he has no conduct sheet or criminal record.

Purpose, objectives and the principles of sentencing

[9] The fundamental purpose of sentencing in a court martial is to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale, and to contribute to respect for the law and maintenance of a just, peaceful and safe society. The fundamental purpose is achieved by imposing sanctions that have one of more objectives as set out at subsection 203.1(2) of the *NDA*. The prosecution emphasized that, in their negotiations, he and defence counsel closely considered the objectives set out therein and given the circumstances here, crafted a sentence that would facilitate the offender's reintegration back into the CAF and into the infantry. He also emphasized denunciation and deterrence. Specific deterrence relates to the offender personally so that he never engages in this type of conduct again, but there is also a wider message of general deterrence to ensure that other individuals who are undergoing training or in platoons, etc., never engage in this type of conduct.

[10] Also under the new section 203.3 of the *NDA*, in imposing a sentence, the Court shall increase or reduce a sentence to account for any aggravating and mitigating circumstances relevant to the offence or the offender. After hearing the submissions of counsel, the Court highlights the following aggravating factors:

- (a) Substantial harm in the military training system. Although the prosecution likened the misconduct to that occurring on "operations", I would clarify that the misconduct occurred in the training environment. However, the fact that it occurred in recruit training is particularly aggravating. Recruit training transforms an individual who enters as a civilian and transitions into a military member. It sets the bedrock of military discipline to be followed throughout one's military career. For this reason, the substantial harm is as aggravating as if it occurred on an operation.
- (b) Number of victims and incidents. The prosecution indicated there were five victims and ten incidents.
- (c) Areas of the body touched. The prosecution indicated it was a violation of personal, physical and sexual integrity of the victims.
- (d) Age of the offender. The offender was twenty-six years old when the incidents occurred. He was older than most recruits who are generally in the eighteen to twenty year range and was older than the victims.
- (e) Lack of self-reflection. On more than one occasion he was told to stop yet he repeated the same conduct.

[11] The Court notes there are several mitigating factors that must be highlighted:

- (a) Guilty plea. Private Koutsogiannis's plea of guilty for the offence as described in the Statement of Circumstances must be given its full weight. His guilty plea has saved the Court, counsel and the unit

supporting the Court considerable time. There were five victims in this case; it would have taken a long time to get all that evidence before the Court. And importantly, the offender spared those victims from having to come before the Court and engage in a public trial where they would have to testify. The guilty plea also shows that the offender has reflected on the misconduct and assumed responsibility for what he did. His actions reflect genuine remorse and willingness to make amends.

- (b) First-time offender. The offender has no conduct sheet or previous criminal record. This is the first disciplinary hearing of any type for him.
- (c) Time served in the CAF. This happened at the offender's entry to the CAF and he has served for almost three years with no notable incidents.
- (d) Indirect impact on his career. Since these incidents were reported and investigated, the offender's training has been halted and he has only been performing administrative type duties.
- (e) The Court did not consider the misconduct that occurred between him and his peers to be a mitigating factor. The alleged misconduct was clearly wrong and on the facts before the court, the offender cannot justify or lessen the gravity of his misconduct by relying upon the wrongful misconduct of others. However, the Court did consider the context of the ongoing misconduct in her overall assessment of the circumstances and as a basis for supporting the member's reintegration back into the CAF.

Parity

[12] Pursuant to section 203.3 of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed on similar offenders for similar offences. The Court was provided with the following courts martial to consider: *R. v. Brownlee*, 2019 CM 2021, *R. v. Duvall*, 2018 CM 2027, *R. v. Brunelle*, 2017 CM 4001 and *R. c. St-Pierre*, 2016 CM 1020.

[13] In short, based on the case law and the submissions made by counsel, it is clear that the sentence recommended in the joint submission is within an acceptable range for the type of punishment historically awarded for this type of offence.

Comments

[14] Private Koutsogiannis your guilty plea is particularly important because it reflects your level of professionalism and willingness to step forward to assume responsibility. It reflects that you recognize that you crossed the line with your conduct and what might have started out as or considered fun by some is considered harassment, an assault and an invasion of trust by others. All of this eventually can lead to a

breakdown of trust, loyalty and discipline, all of which are fundamental to the functioning of an effective armed force.

[15] The fact that the misconduct was commonplace on the course does not make it right and any perception that this type of horseplay is acceptable sets up a gateway for harassment and criminal misconduct that ultimately breaks down unit cohesiveness eroding personal and unit discipline very quickly. Essentially, this case is about the breakdown of the personal discipline of the offender that led to the breakdown of trust within the platoon.

[16] If there was any ambiguity that existed during the course as to the acceptability of this type of behaviour, this was definitely clarified by the pursuit of charges and the conviction you now have. I would invite you to review Operation HONOUR. This type of horseplay is not acceptable and will not be tolerated in the CAF.

[17] I am going to close by referring to a statement I made in the case of *R. v. Gobin*, 2018 CM 2008, because I think it is very important.

[36] CAF recruitment brochures announce that “[i]nfantry” soldiers are the Army’s primary combat fighters and are responsible for closing with and engaging the enemy [and must be] capable of operating anywhere in the world in any environment.” That is no small task. A lot is demanded of our infantry soldiers or riflemen. This Court has stated that young soldiers, sailors, airmen and airwomen are expected to test their limits and boundaries.

[37] As a rifleman, you may be asked to deploy where you might be needed to fight to the death against an enemy, or alternatively, you could be tasked to serve as a consummate diplomat, interacting and providing assistance to the world’s most vulnerable. For this reason, self-discipline is essential.

[38] From ancient Roman times to today, the best armies have always been the most disciplined. As such, it follows that in international law (and Canada has signed on to the additional protocol for this) requires that armed forces be subject to an internal disciplinary system and leaders, at all levels, are required to enforce compliance with the rules of international law applicable in armed conflict. (Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 43). Ultimately, that is why we have a military justice system.

[39] In an effort to maintain a robust armed force capable of meeting any challenge, the CAF recruits young men and women who possess unbridled enthusiasm and energy together with great resourcefulness and trains them in duty and discipline.

[40] However, when our military members operate outside of CAF expectations, appropriate course corrections must be made and this is done with the various tools at the disposal of the military justice system. Discipline in the CAF becomes a trained reflex upon which our superiors, peers and subordinates can rely, at all times.

[41] As such, discipline is an inculcated pattern of obedience. It starts in training, in your unit, with your leaders instilling in you the values Canadians expect of us to be instinctive, when nobody is looking. The Court noted that these non-sanctioned activities occurred when the training staff had left for the day and members were left to

their own devices. It is the way we act, when nobody is looking that is a testament to our character and reflects the discipline needed for Canadians to trust us in our roles.

[42] I refer to a quote from M de Saxe, *Reveries on the art of war*, translated by Brig. General Thomas R. Phillips (Mineola, NY: Dover Publications, 2007), one of the earliest books on the art of war, which was heavily relied upon by Frederick the Great. It still holds true today:

[Translation]

[M]ilitary discipline [. . .] is the soul of armies. If it is not established with wisdom and maintained with unshakable resolution you will have no soldiers. Regiments and armies will be only contemptible, armed mobs, more dangerous to their own country than to the enemy.

[43] Discipline requires the willingness to put others' interests before our own, and to have respect for and compliance with the law.

[18] You are beginning a journey to become an infantryman, in an occupation where there is so much more demanded of you than in many other professions. There will be a lot of bravado and you must hoist in the lesson you learned from this and lead by positive example. It is the soldiers that can keep their heads about them leading resolutely with conviction and maturity that will be the most successful. This is what you need to do as you move forward. You are going to be one of the older soldiers undergoing DP2 and follow-up infantry training. This means when you see this type of inappropriate conduct, you must speak out and correct it on the spot. Members have to understand that this type of behaviour is unacceptable not just because society has said so, but in the operational military perspective, it will ultimately whittle away the confidence of the members in your unit. It is like a double-edged sword. In combat, you will have to rely upon that person you harassed to be at their best because your life might depend on it. Do not ever engage in conduct that will undermine the confidence of others.

Conclusion

[19] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the proposed sentence would, if reviewed by the reasonable and informed CAF member, as well as the public at large, be viewed as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the sentence cause the general public to lose confidence in the military justice system?

[20] Although a fine in the amount of \$4,000 is indeed significant, based on the scale of punishments set out within the *NDA*, the imposition of a severe reprimand is reserved for serious offences. A severe reprimand is intended to send a message to the larger community that this type of inappropriate conduct is unacceptable and will be punished. It will be a stain that stays on the member's record for the foreseeable future.

Sentence

[21] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence and the gravity, the Court is satisfied that counsel have discharged their obligations in making their joint submission. The recommended sentence is in the public interest and does not bring the administration of military justice into disrepute.

FOR THESE REASONS, THE COURT:

[22] **FINDS** Private Koutsogiannis guilty of the first and only charge on the charge sheet.

[23] **SENTENCES** the offender to a severe reprimand and a fine in the amount of \$4,000 payable in 18 monthly instalments beginning in the August 2020 pay period.

Counsel:

The Director of Military Prosecutions as represented by Major H. Bernatchez and Major A. Dhillon

Lieutenant(N) J.-M. Tremblay, Defence Counsel Services, Counsel for Private P. Koutsogiannis